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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,884	01/22/2004	John R. Boehringer	BLS-100US	5451

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EXAMINER

KOTINI, PAVITRA

ART UNIT	PAPER NUMBER
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3731

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/07/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/762,884

Applicant(s)

BOEHRINGER ET AL.

Examiner

Pavitra Kotini

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 3,8-15,19-26 and 28-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-7,16-18 and 27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>1/22/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's election **without** traverse of Group I, claims 1-18, 27, 28, in phone conversation on 3/1/07 is acknowledged. Claims 19-26, 29-33 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention. Furthermore, claims 3, 8-12, 13-15, and 28 are withdrawn as being drawn to a non-elected species. Specifically, claim 3 is drawn to figs. 8A-8B due to the T shaped element, claims 13-15 are drawn to fig. 3A due to a the vacuum, and claims 8-12 and 28 are drawn to fig. 7 due to the coil spring and U shaped body. Therefore, claims 1, 2, 4-7, 16-18, and 27 are drawn to the election of species A, figure 3B, and will be examined on the merits:

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 18 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, claim 19 recites that the patient is an animal, however, there is no explanation or mention in the instant disclosure of how the invention can be utilized in an animal or what type of animal.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Solar et al. (US-5947983).

Solar discloses:

Regarding **claim 1**, an external member (110); and an internal member (120) rotatably coupled to said external member (col.3, lines 7-9), said internal member having at least one receiver (111) for receiving said at least one suture (fig.2E, 145).

Regarding **claim 2**, at least one suture is passed through said at least one receiver in said internal member (fig. 2E), said at least one suture being coupled to portions of said wound (fig. 2E) and tightened by rotating said internal member in a first direction to draw said portions of said wound toward one another (col.3. line 63-col.4, line 2).

Claims 4-7, 16-18 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Cosmetto et al. (US-5127412).

Cosmetto discloses:

Regarding **claim 4**, a body (30) having a at least one aperture (35) extending radially through said body; and a shaft (40) at least partially disposed within and

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rotatably coupled to said body (12), said shaft having a plurality of apertures (41) and/or slots substantially in line with said at least one aperture in said body, said plurality of apertures spaced apart from one another and extending radially through said shaft (fig.17).

Regarding **claim 5**, said device is inherently capable for placement within said wound.

Regarding **claim 6**, said sutures (41) are passed through said at least one aperture in said body and said plurality of apertures in said shaft, said sutures being coupled to portions of said wound and tightened by rotating said shaft in a first direction to draw said portions of said wound toward one another (figs. 5, 6, 9, 10).

Regarding **claim 7**, means for preventing said shaft from rotating in a direction opposite to said first direction (45).

Regarding **claim 16**, a means for applying a rotational force to an end of said shaft to rotate said shaft with respect to said body (12).

Regarding **claims 17 and 18**, Cosmetto discloses using the wound closure device for a patient (col.5, line 43), wherein it is old and well known in the art that the patient is human, and furthermore that an animal, broadly interpreted, is also a human.

Regarding **claim 27**, a tubular body (30) having a first plurality of apertures (35) extending radially through said tubular body, said plurality of apertures spaced apart from one another along a length of said tubular body (fig. 17 and 18); and a shaft (40) disposed within and rotatably coupled to said tubular body (12), said shaft having a respective plurality of apertures (41) and/or slots substantially in line with said apertures

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in said tubular body, said respective plurality of apertures spaced apart from one another and extending radially through said shaft (fig. 17 and 18).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pavitra Kotini whose telephone number is 571-272-0624. The examiner can normally be reached on M-F 8:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

P. Kotini
AU 3731
3/2/07


ANH TUAN T. NGUYEN
SUPERVISORY PATENT EXAMINER
